



STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON DC 20005

MAILED

DEC 29 2011

OFFICE OF PETITIONS

In re Application of
Alexa L. Martinez et al.
Application No. 10/669,597
Filed: February 19, 2008
Attorney Docket No.
2057.0040002/ELE/HCC

:
: **DECISION ON APPLICATION**
: **FOR PATENT TERM ADJUSTMENT**
:
:

This is a decision on the "Request for Reconsideration of Patent Term Adjustment Determination Under 37 C.F.R. § 1.705(b)", filed December 20, 2011. Applicants request that the patent term adjustment at the time of the mailing of the Notice of Allowance be corrected from 427 days to 508 days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is FIVE HUNDRED EIGHT (508) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On September 20, 2011, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 427 days. The instant application for patent term adjustment was timely filed¹. Applicants dispute the reduction of 81 days of PTA for applicant delay in filing an Information Disclosure Statement (IDS) on May 24, 2011 after the filing of a response to a non-Final Office Action on March 4, 2011.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the record reveals that on March 4, 2011 applicants filed a response to the non-Final Office action mailed October 4, 2010. Then on May 24, 2011, applicants filed the Information Disclosure Statement (IDS). Pursuant to 37 CFR § 1.704(c)(8), the submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution. The record does not support a conclusion that the IDS was expressly requested by the examiner. Accordingly, filing of the IDS may be considered a failure to engage and a proper basis for reduction.

¹ PALM records indicate that the Issue Fee was also received on December 20, 2011.

However, the record supports a conclusion that the IDS was received May 24, 2011 with a 37 CFR 1.704(d) statement.

37 CFR 1.704(d) provides that a paper containing only an information disclosure statement in compliance with 37 CFR 1.97 and 1.98 will not be considered (result in a reduction) under 37 CFR 1.704(c)(6), 1.704(c)(8), 1.704(c)(9), or 1.704(c)(10) if it is accompanied by a statement that each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart application and that this communication was not received by any individual designated in 37 CFR 1.56(c) more than thirty days prior to the filing of the information disclosure statement. This provision will permit applicants to submit information first cited in a communication from a foreign patent office in a counterpart application to the Office without a reduction in patent term adjustment if an information disclosure statement is promptly (within thirty days of receipt of the first communication) submitted to the Office. Compliance with the statement requirement of 37 CFR 1.704(d) does not substitute for compliance with any relevant requirement of 37 CFR 1.97 or 1.98. 37 CFR 1.704(d) also provides that this thirty-day period is not extendable unless expressly requested by the examiner, within the meaning of § 1.704(c)(8). Accordingly, no reduction is warranted.

In view thereof, no reduction should have been taken for the filing of the IDS after the mailing of the response to the non-Final Office Action on May 24, 2011.

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3212.

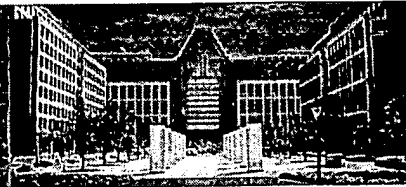


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Revised PALM Screen



Patent Term Adjustments



PTA/PTE Information

Patent Term Adjustment

Patent Term Extension

Application Number*: 10669597

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[Explanation of PTA Calculation](#)

[Explanation of PTE Calculation](#)

PTA Calculations for Application: 10669597

Application Filing Date	09/25/2003	Overlapping Days Between (A and B) or (A and C)	0
Issue Date of Patent		Non-Overlapping USPTO Delays	1100
A Delays	1100	PTO Manual Adjustment	81
B Delays	0	Applicant Delay (APPL)	673
C Delays	0	Total PTA (days)	508

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
130	12/28/2011		P028	Adjustment of PTA Calculation by PTO	81	0	
124	09/20/2011		MN/=.	Mail Notice of Allowance		0	
123	09/19/2011		OAR	Office Action Review		0	
122	09/19/2011		OAR	Office Action Review		0	
121	09/19/2011		IREV	Issue Revision Completed		0	
120	09/19/2011		DVER	Document Verification		0	
119	09/19/2011		N/=.	Notice of Allowance Data Verification Completed		0	
118	09/19/2011		DOCK	Case Docketed to Examiner in GAU		0	
117	09/16/2011		EX.A	Examiner's Amendment Communication		0	
116	09/16/2011		CNTA	Allowability Notice		0	
113	07/29/2011		FWDX	Date Forwarded to Examiner		0	
112	07/27/2011		A.NE	Amendment after Final Rejection		0	
110	05/27/2011		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		0	
108	05/27/2011		MCTFR	Mail Final Rejection (PTOL - 326)		0	
107	05/25/2011		OAR	Office Action Review		0	
115	05/24/2011		IDSC	Information Disclosure Statement considered		0	
114	05/24/2011		IDSC	Information Disclosure Statement considered		0	
111	05/24/2011	03/04/2011	M844	Information Disclosure Statement (IDS) Filed	81	99	
109	05/24/2011		M844	Information Disclosure Statement (IDS) Filed		0	
106	05/24/2011		WIDS	Information Disclosure Statement (IDS) Filed		0	
105	05/24/2011		WIDS	Information Disclosure Statement (IDS) Filed		0	
104	05/23/2011		CTFR	Final Rejection		0	
100	03/08/2011		FWDX	Date Forwarded to Examiner		0	
103	03/04/2011		IDSC	Information Disclosure Statement considered		0	
102	03/04/2011		EIDS.	Electronic Information Disclosure Statement		0	
101	03/04/2011		AF/D	Affidavit(s) (Rule 131 or 132) or Exhibit(s) Received		0	
99	03/04/2011	01/04/2011	A...	Response after Non-Final Action	59	94	
98	03/04/2011		XT/G	Request for Extension of Time - Granted		0	
97	03/04/2011		WIDS	Information Disclosure Statement (IDS) Filed		0	
96	10/20/2010		MEXIN	Mail Examiner Interview Summary (PTOL - 413)		0	
95	10/20/2010		EXIN	Examiner Interview Summary Record (PTOL - 413)		0	
94	10/04/2010		MCTNF	Mail Non-Final Rejection		0	
93	10/01/2010		CTNF	Non-Final Rejection		0	
92	04/15/2010		IDSC	Information Disclosure Statement considered		0	
90	04/15/2010		M844	Information Disclosure Statement (IDS) Filed		0	
89	04/15/2010		RCAP	Reference capture on IDS		0	
88	04/15/2010		M844	Information Disclosure Statement (IDS) Filed		0	
87	04/15/2010		WIDS	Information Disclosure Statement (IDS) Filed		0	
86	12/08/2009		FWDX	Date Forwarded to Examiner		0	
85	12/08/2009		W/N=	Withdrawal of Notice of Allowance		0	
84	10/28/2009		FIDC	Finished Initial Data Capture		0	
91	10/01/2009		IDSC	Information Disclosure Statement considered		0	
83	10/01/2009		RCAP	Reference capture on IDS		0	
82	10/01/2009		M844	Information Disclosure Statement (IDS) Filed		0	
81	10/01/2009		WIDS	Information Disclosure Statement (IDS) Filed		0	
80	09/14/2009		EIDC	Export to Initial Data Capture		0	
79	09/09/2009		MEX.A	Mail Examiner's Amendment		0	
78	09/09/2009		MN/=.	Mail Notice of Allowance		0	
77	09/09/2009		IREV	Issue Revision Completed		0	
76	09/09/2009		DVER	Document Verification		0	
75	09/09/2009		N/=.	Notice of Allowance Data Verification Completed		0	
74	09/09/2009		DOCK	Case Docketed to Examiner in GAU		0	
73	08/31/2009		EX.A	Examiner's Amendment Communication		0	
72	08/31/2009		CNTA	Allowability Notice		0	
70	05/26/2009		FWDX	Date Forwarded to Examiner		0	

69	05/22/2009	A.NE	Amendment after Final Rejection		0
68	05/22/2009	C602	Oath or Declaration Filed (Including Supplemental)		0
71	04/22/2009	EXIN	Examiner Interview Summary Record (PTOL - 413)		0
66	03/25/2009	03/20/2008 MCTFR	Mail Final Rejection (PTOL - 326)	370	38
67	03/23/2009	LET.	Miscellaneous Incoming Letter		0
65	01/12/2009	IDSC	Information Disclosure Statement considered		0
60	01/12/2009	RCAP	Reference capture on IDS		0
59	01/12/2009	11/20/2007 M844	Information Disclosure Statement (IDS) Filed	419	38
58	01/12/2009	WIDS	Information Disclosure Statement (IDS) Filed		0
64	08/19/2008	IDSC	Information Disclosure Statement considered		0
57	08/19/2008	M844	Information Disclosure Statement (IDS) Filed		0
55	08/19/2008	WIDS	Information Disclosure Statement (IDS) Filed		0
63	07/07/2008	IDSC	Information Disclosure Statement considered		0
56	07/07/2008	M844	Information Disclosure Statement (IDS) Filed		0
54	07/07/2008	WIDS	Information Disclosure Statement (IDS) Filed		0
62	04/15/2008	IDSC	Information Disclosure Statement considered		0
52	04/15/2008	M844	Information Disclosure Statement (IDS) Filed		0
49	04/15/2008	WIDS	Information Disclosure Statement (IDS) Filed		0
61	02/11/2008	IDSC	Information Disclosure Statement considered		0
51	02/11/2008	M844	Information Disclosure Statement (IDS) Filed		0
47	02/11/2008	WIDS	Information Disclosure Statement (IDS) Filed		0
46	02/04/2008	CTFR	Final Rejection		0
45	12/05/2007	IDSC	Information Disclosure Statement considered		0
43	12/05/2007	RCAP	Reference capture on IDS		0
42	12/05/2007	EIDS.	Electronic Information Disclosure Statement		0
40	12/05/2007	WIDS	Information Disclosure Statement (IDS) Filed		0
39	12/02/2007	FWDX	Date Forwarded to Examiner		0
38	11/20/2007	A...	Response after Non-Final Action		0
37	08/22/2007	07/07/2007 MCTNF	Mail Non-Final Rejection	46	24
44	06/18/2007	IDSC	Information Disclosure Statement considered		0
36	06/18/2007	M844	Information Disclosure Statement (IDS) Filed		0
35	06/18/2007	WIDS	Information Disclosure Statement (IDS) Filed		0
34	04/02/2007	CTNF	Non-Final Rejection		0
25	03/15/2007	FWDX	Date Forwarded to Examiner		0
29	03/07/2007	IDSC	Information Disclosure Statement considered		0
28	03/07/2007	RCAP	Reference capture on IDS		0
27.7	03/07/2007	M844	Information Disclosure Statement (IDS) Filed		0
27	03/07/2007	WIDS	Information Disclosure Statement (IDS) Filed		0
26	03/07/2007	C614	New or Additional Drawing Filed		0
24	03/07/2007	11/13/2006 ELC.	Response to Election / Restriction Filed	114	21
23	02/07/2007	NINA	Mail Notice of Informal or Non-Responsive Amendment		0
22	11/21/2006	FWDX	Date Forwarded to Examiner		0
21.1	11/13/2006	A.I.	Informal or Non-Responsive Amendment after Examiner Action		0
21	11/13/2006	ELC.	Response to Election / Restriction Filed		0
20	10/10/2006	11/25/2004 MCTRS	Mail Restriction Requirement	684	0.5
19	10/02/2006	CTRS	Restriction/Election Requirement		0
18	11/22/2005	TSSCOMP	IFW TSS Processing by Tech Center Complete		0
30	10/14/2005	IDSC	Information Disclosure Statement considered		0
17.7	10/14/2005	M844	Information Disclosure Statement (IDS) Filed		0
17	10/14/2005	WIDS	Information Disclosure Statement (IDS) Filed		0
31	08/19/2005	IDSC	Information Disclosure Statement considered		0
16.7	08/19/2005	M844	Information Disclosure Statement (IDS) Filed		0
16	08/19/2005	WIDS	Information Disclosure Statement (IDS) Filed		0
32	04/08/2005	IDSC	Information Disclosure Statement considered		0
15	04/08/2005	RCAP	Reference capture on IDS		0
14.7	04/08/2005	M844	Information Disclosure Statement (IDS) Filed		0
14	04/08/2005	WIDS	Information Disclosure Statement (IDS) Filed		0
13	01/03/2005	LET.	Miscellaneous Incoming Letter		0
33	06/02/2004	IDSC	Information Disclosure Statement considered		0
12	06/02/2004	RCAP	Reference capture on IDS		0
11.7	06/02/2004	M844	Information Disclosure Statement (IDS) Filed		0
11	06/02/2004	WIDS	Information Disclosure Statement (IDS) Filed		0
10	02/06/2004	DOCK	Case Docketed to Examiner in GAU		0
9	12/18/2003	WROIPE	Application Return from OIPE		0
8	12/18/2003	COMP	Application Is Now Complete		0
7	12/18/2003	ROIPE	Application Return TO OIPE		0
6	12/18/2003	OIPE	Application Dispatched from OIPE		0
5	12/18/2003	COMP	Application Is Now Complete		0
4	12/08/2003	CLSS	CASE CLASSIFIED BY OIPE		0
3	12/08/2003	L194	Cleared by OIPE CSR		0
2	10/31/2003	SCAN	IFW Scan & PACR Auto Security Review		0
1	09/25/2003	IEXX	Initial Exam Team nn		0
0.5	09/25/2003	EFILE	Filing date		0

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